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U.S. DISTRICT COURT E.D.N.Y.

★ JAN 30 2020 ★

BROOKLYN OFFICE

PTH:AMC
F. #2015R01974

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

- against -

RICHARD ANTHONY BARKER,
JOSE ANDREU and
RICARDO ANDUJAR,

Defendants.

----- X

THE GRAND JURY CHARGES:

INDICTMENT

Cr. No. **CR 20-00045**
(T. 18, U.S.C., §§ 371, 2 and 3551 et
seq.; T. 26, U.S.C., §§ 7206(1) and
7206(2))

KOMITEE, J.

REYES, M.J.

INTRODUCTION

At all times relevant to this Indictment, unless otherwise indicated:

I. The Defendants

1. The defendant RICHARD ANTHONY BARKER was a resident of Queens, New York who owned and operated a tax return preparation business under the names Tax Depot, Inc. ("Tax Depot") and KPS Kampant, Parkinson, Sinclair & Co., Inc. ("KPS").

2. The defendant JOSE ANDREU was a resident of Newburgh, New York.

3. The defendant RICARDO ANDUJAR was a resident of the Bronx, New York.

II. IRS Forms 1099-OID, 1040, 3175 and 3176

4. The Internal Revenue Service (“IRS”), an agency of the United States Department of the Treasury, was responsible for administering and enforcing federal revenue laws and regulations regarding the ascertainment, computation, assessment and collection of taxes owed to the United States.

5. IRS Form 1099-OID was used to report to the IRS Original Issue Discount (“OID”) income received by a taxpayer. OID income was the excess of the stated redemption price of a financial obligation, such as a bond, at maturity over its issue price. Form 1099-OID also reported any federal income taxes withheld from the OID income. Form 1099-OID was generally issued by financial institutions.

6. U.S. Individual Income Tax Return, Form 1040 (“Form 1040”) was a tax return that a United States taxpayer submitted to the IRS on a yearly basis, wherein the taxpayer reported items including income, certain expenses and tax.

7. When the IRS received or identified a tax return that attempted to advance a frivolous position as to the tax laws, the IRS issued a Form 3175, which was a notification letter to a taxpayer stating that the IRS deemed a claim on a taxpayer’s tax return to be frivolous and warning the taxpayer of possible civil penalties and criminal prosecution if the claim was not corrected. The IRS issued a Form 3176 in response to any subsequent submission received from the taxpayer that attempted to advance a frivolous position as to the tax laws.

III. The Fraudulent Scheme

8. In or about and between May 2011 and August 2017, the defendants RICHARD ANTHONY BARKER, JOSE ANDREU and RICARDO ANDJUAR, together

with others, prepared and caused to be prepared, and then filed and caused to be filed, for themselves and others, (a) false federal income tax returns through Tax Depot and KPS, and by other means, including Forms 1040, Amended U.S. Individual Income Tax Returns (“Forms 1040X”), Annual Summary and Transmittal of U.S. Information Returns (“Forms 1096”) and associated Schedules, which they submitted to the IRS using, among other means, an Electronic Filing Identification Number (“EFIN”) assigned by the IRS; and (b) fictitious IRS Forms 1099-OID.

9. The Forms 1099-OID falsely reported that financial institutions, creditors and other entities had withheld federal income tax on behalf of the defendants and other taxpayers. Based on these fictitious withholdings, the defendants prepared and filed, for themselves and others, false federal income tax returns with the IRS that claimed tax refunds to which the defendants and other taxpayers were not entitled.

10. The IRS sent the defendants BARKER, ANDREU and ANDUJAR notices, including Forms 3175 and 3176, stating that the information the defendants filed, and caused to be filed, was deemed to be frivolous. Despite receiving these notices, the defendants continued to file, and caused to be filed, for themselves and others, false Forms 1040, 1040X, 1096 and 1099-OID.

COUNT ONE
(Conspiracy to Defraud the United States)

11. The allegations contained in paragraphs one through ten are realleged and incorporated fully as if fully set forth in this paragraph.

12. In or about and between May 2011 and April 2019, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the

defendants RICHARD ANTHONY BARKER, JOSE ANDREU and RICARDO ANDJUAR, together with others, did knowingly and willfully conspire to defraud the United States and an agency thereof, to wit: the IRS, for the purpose of impeding, impairing, obstructing and defeating the lawful government functions of the IRS, to wit: the ascertainment, computation, assessment and collection of income taxes. In furtherance of the conspiracy and to effect its objects, within the Eastern District of New York and elsewhere, the defendants BARKER, ANDREU and ANDUJAR, together with others, did commit and cause the commission of the following:

OVERT ACTS

a. On or about the dates set forth below, the defendants identified below, together with others, submitted and caused to be submitted to the IRS fraudulent Forms 1099-OID for the tax years set forth below in the names of financial institutions and other entities whose identities are known to the Grand Jury:

| Overt Act | Approximate Submission Date | Defendant | Financial Institution | False OID | False Income Tax Withholding | Tax Year |
|------------------|------------------------------------|------------------|------------------------------|------------------|-------------------------------------|-----------------|
| a(1) | February 23, 2017 | BARKER | U.S. Bank A | \$163,312.74 | \$104,520.15 | 2016 |
| a(2) | February 23, 2017 | BARKER | U.S. Bank A | \$135,494.77 | \$86,716.65 | 2016 |
| a(3) | February 23, 2017 | BARKER | U.S. Bank D | \$43,923.77 | \$28,111.21 | 2016 |
| a(4) | February 23, 2017 | BARKER | U.S. Bank D | \$41,089.77 | \$26,297.45 | 2016 |
| a(5) | February 23, 2017 | BARKER | U.S. Bank E | \$21,060.42 | \$13,478.67 | 2016 |
| a(6) | February 23, 2017 | BARKER | U.S. Bank E | \$17,149.97 | \$10,975.98 | 2016 |
| a(7) | February 23, 2017 | BARKER | U.S. Bank D | \$3,091.07 | \$2,009.20 | 2016 |

| | | | | | | |
|-------|-------------------|---------|-------------|----------|-------------|------|
| a(8) | February 27, 2017 | ANDUJAR | U.S. Bank A | \$28,768 | \$15,894 | 2016 |
| a(9) | February 27, 2017 | ANDUJAR | U.S. Bank A | \$15,380 | \$8,497 | 2016 |
| a(10) | February 27, 2017 | ANDUJAR | U.S. Bank B | \$7,733 | \$4,273 | 2016 |
| a(11) | February 27, 2017 | ANDUJAR | U.S. Bank B | \$5,895 | \$3,257 | 2016 |
| a(12) | July 5, 2018 | ANDUJAR | U.S. Bank A | \$34,796 | \$19,972.90 | 2017 |
| a(13) | July 5, 2018 | ANDUJAR | U.S. Bank A | \$19,457 | \$11,166.60 | 2017 |
| a(14) | July 5, 2018 | ANDUJAR | U.S. Bank C | \$11,491 | \$6,595.83 | 2017 |
| a(15) | July 5, 2018 | ANDUJAR | U.S. Bank C | \$7,158 | \$4,108.69 | 2017 |
| a(16) | July 5, 2018 | ANDUJAR | U.S. Bank C | \$4,292 | \$2,463.61 | 2017 |

b. On or about the dates set forth below, the defendants identified below submitted and caused to be submitted to the IRS fraudulent Forms 1040 and Forms 1040X, for the tax years set forth below, in their own names and the names of individuals whose identities are known to the Grand Jury:

| Overt Act | Approximate Submission Date | Defendant(s) | Taxpayer | Tax Year | Form |
|-----------|-----------------------------|--------------------|-------------|----------|-------|
| b(1) | May 5, 2011 | ANDREU | ANDREU | 2007 | 1040X |
| b(2) | May 31, 2011 | ANDUJAR | ANDUJAR | 2006 | 1040 |
| b(3) | April 19, 2012 | ANDUJAR | ANDUJAR | 2010 | 1040 |
| b(4) | May 14, 2012 | ANDREU | ANDREU | 2007 | 1040X |
| b(5) | May 14, 2012 | ANDUJAR and BARKER | Jane Doe #1 | 2011 | 1040 |
| b(6) | May 14, 2012 | ANDUJAR and BARKER | ANDUJAR | 2010 | 1040 |
| b(7) | May 21, 2012 | ANDUJAR and BARKER | ANDREU | 2010 | 1040 |
| b(8) | July 24, 2012 | BARKER | BARKER | 2011 | 1040X |
| b(9) | April 14, 2013 | ANDREU and BARKER | ANDREU | 2009 | 1040X |
| b(10) | May 6, 2013 | ANDREU and BARKER | ANDREU | 2012 | 1040 |
| b(11) | May 13, 2013 | ANDUJAR and BARKER | ANDUJAR | 2012 | 1040 |
| b(12) | June 3, 2013 | BARKER | BARKER | 2012 | 1040 |
| b(13) | June 17, 2013 | ANDREU and BARKER | ANDREU | 2011 | 1040 |

| | | | | | |
|-------|-------------------|--------------------|-------------|------|-------|
| b(14) | June 24, 2013 | ANDUJAR and BARKER | Jane Doe #1 | 2012 | 1040 |
| b(15) | June 24, 2013 | ANDUJAR and BARKER | John Doe #1 | 2012 | 1040 |
| b(16) | July 1, 2013 | ANDREU and BARKER | John Doe #2 | 2012 | 1040 |
| b(17) | December 2, 2013 | ANDUJAR and BARKER | ANDUJAR | 2011 | 1040A |
| b(18) | May 12, 2014 | ANDUJAR and BARKER | ANDUJAR | 2013 | 1040 |
| b(19) | June 23, 2014 | ANDREU and BARKER | ANDREU | 2013 | 1040 |
| b(20) | June 30, 2014 | BARKER | BARKER | 2013 | 1040 |
| b(21) | April 21, 2015 | ANDUJAR and BARKER | ANDUJAR | 2012 | 1040 |
| b(22) | May 6, 2015 | ANDUJAR and BARKER | ANDUJAR | 2012 | 1040 |
| b(23) | June 1, 2015 | ANDUJAR | ANDUJAR | 2014 | 1040 |
| b(24) | September 8, 2015 | ANDUJAR and BARKER | ANDUJAR | 2012 | 1040 |
| b(25) | July 17, 2017 | BARKER | BARKER | 2015 | 1040 |
| b(26) | August 16, 2017 | ANDREU and BARKER | ANDREU | 2009 | 1040X |
| b(27) | April 12, 2019 | ANDREU | ANDREU | 2017 | 1040A |

c. On or about the dates set forth below, the defendants identified below, together with others, submitted and caused to be submitted to the IRS fraudulent Forms 1096 for the tax years set forth below, with fictitious Forms 1099-OID attached:

| Overt Act | Approximate Submission Date | Defendant | Tax Year |
|-----------|-----------------------------|-----------|----------|
| c(1) | February 23, 2017 | BARKER | 2016 |
| c(2) | February 27, 2017 | ANDUJAR | 2016 |

(Title 18, United States Code, Sections 371 and 3551 et seq.)

COUNTS TWO AND THREE
(Subscribing to False Tax Returns - ANDREU)

13. The allegations set forth in paragraphs one through ten are realleged and incorporated as if fully set forth in this paragraph.

14. On or about the dates set forth in the table below, within the Eastern District of New York and elsewhere, the defendant JOSE ANDREU, together with others, did knowingly and willfully make and subscribe to Forms 1040 and Forms 1040X, for the tax years set forth below, which were verified by written declarations that each was made under the penalties of perjury, and which were filed with the IRS, which tax returns the defendant did not believe to be true and correct as to one or more material matters, in that the returns claimed income tax refunds in amounts set forth below to which the defendant knew he was not entitled:

| COUNT | TAX YEAR | APPROXIMATE FILING DATE | FALSE ITEMS |
|-------|----------|-------------------------|---|
| TWO | 2013 | June 23, 2014 | a. Taxable Interest, \$217,524 b. Federal income tax withheld, \$199,745 c. Refund claimed, \$135,399 |
| THREE | 2009 | August 16, 2017 | a. Taxable Interest, \$75,944 b. Federal income tax withheld, \$78,750 c. Refund claimed, \$47,480 |

(Title 26, United States Code, Section 7206(1); Title 18, United States Code, Sections 2 and 3551 et seq.)

COUNTS FOUR AND FIVE
(Subscribing to False Tax Returns – BARKER)

15. The allegations set forth in paragraphs one through ten are realleged and incorporated as if fully set forth in this paragraph.

16. On or about the dates set forth in the table below, within the Eastern District of New York and elsewhere, the defendant RICHARD ANTHONY BARKER, together with others, did knowingly and willfully make and subscribe to Forms 1040, for the tax years set forth below, which were verified by written declarations that each was made under the penalties of perjury, and which were filed with the IRS, which tax returns the defendant did not believe to be true and correct as to one or more material matters, in that the returns claimed false taxable interest, federal income tax withholdings and income tax refunds in amounts set forth below, to which the defendant knew he was not entitled:

| COUNT | TAX YEAR | APPROXIMATE FILING DATE | FALSE ITEMS |
|-------|----------|-------------------------|---|
| FOUR | 2013 | June 30, 2014 | a. Taxable Interest, \$635,647 b. Federal income tax withheld, \$585,971 c. Refund claimed, \$355,288 |
| FIVE | 2015 | July 17, 2017 | a. Taxable Interest, \$344,214 b. Federal income tax withheld, \$156,875 c. Refund claimed, \$43,327 |

(Title 26, United States Code, Section 7206(1); Title 18, United States Code, Sections 2 and 3551 et seq.)

COUNT SIX

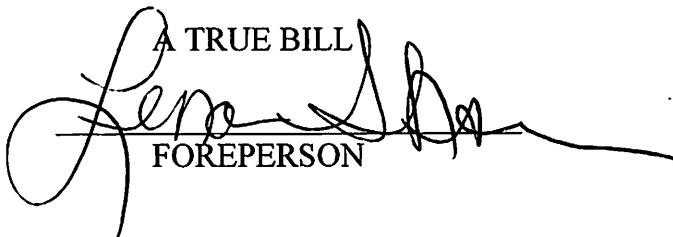
(Aiding and Assisting in the Preparation of False Tax Returns – BARKER)

17. The allegations set forth in paragraphs one through ten are realleged and incorporated as if fully set forth in this paragraph.

18. On or about June 23, 2014, within the Eastern District of New York and elsewhere, the defendant RICHARD ANTHONY BARKER, together with others, did willfully aid and assist in, and procure, counsel and advise the preparation and presentation to the IRS under, and in connection with a matter arising under, the internal revenue laws, of

a return, claim and other document, to wit: a Form 1040, for taxpayer JOSE ANDREU, for the tax year 2013, which return was false and fraudulent as to one or more material matters, in that the return falsely claimed, among other items, taxable interest of \$217,524, federal income tax withheld of \$199,745 and a refund of \$135,399, whereas, as defendant BARKER then and there well knew and believed, said taxpayer was not entitled to claim those false items.

(Title 26, United States Code, Section 7206(2); Title 18, United States Code, Sections 2 and 3551 et seq.)

A TRUE BILL

FOREPERSON

RICHARD P. DONOGHUE
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

BY: 

ACTING UNITED STATES ATTORNEY
PURSUANT TO 28 C.F.R. O.136

F.#: 2015R01974
FORM DBD-34
JUN. 85

No. _____

UNITED STATES DISTRICT COURT

EASTERN *District of* NEW YORK

CRIMINAL DIVISION

THE UNITED STATES OF AMERICA

vs.

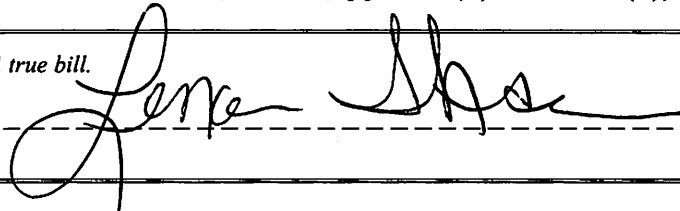
RICHARD ANTHONY BARKER, *et al.*,

Defendants.

INDICTMENT

(T. 18, U.S.C., §§ 371, 2 and 3551 et seq.;
T. 26, U.S.C., §§ 7206(1) and 7206(2))

A true bill.



Foreperson

Filed in open court this _____ day,

of _____ A.D. 20 _____

Clerk

Bail, \$ _____

Ann M. Cherry, Trial Attorney, DOJ Tax Division